

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, MAY 13, 2009**

A. Roll call

The Special City Council meeting of May 13, 2009, held at the Hutchins Street Square, 125 South Hutchins Street, Lodi, was called to order by Mayor Hansen at 6:42 p.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Public Hearings

- B-1 Public Hearing to Consider the Appeals Filed by Wal-Mart Stores, Inc., Browman Development Company, Lodi First, and PAQ, Inc. Regarding the Decision of the Planning Commission to Deny Use Permit (U-02-12) Concerning the Construction of a Commercial Center in a C-S, Commercial Shopping District, and the Sale of Alcoholic Beverages at the Proposed Wal-Mart Supercenter; Vesting Tentative Parcel Map (03-P-001) Concerning the Creation of 12 Parcels for the Project; and Site Plan and Architectural Review (08-SP-08) Concerning Site Plan and Architectural Review of a Proposed Wal-Mart Supercenter at the Proposed Lodi Shopping Center Located at 2640 West Kettleman Lane (Collectively "the Project"); and Further Consider Approval of the Project and Consider Adopting Findings and Statements of Overriding Considerations Pursuant to the California Environmental Quality Act (CEQA)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider appeals filed by Wal-Mart Stores, Inc., Browman Development Company, Lodi First, and PAQ, Inc. regarding the decision of the Planning Commission to deny Use Permit (U-02-12) concerning the construction of a commercial center in a C-S, Commercial Shopping District, and the sale of alcoholic beverages at the proposed Wal-Mart Supercenter; Vesting Tentative Parcel Map (03-P-001) concerning the creation of 12 parcels for the project; and Site Plan and Architectural Review (08-SP-08) concerning site plan and architectural review of a proposed Wal-Mart Supercenter at the proposed Lodi Shopping Center located at 2640 West Kettleman Lane (collectively "the Project"); and further consider approval of the project and consider adopting findings and statements of overriding considerations pursuant to the California Environmental Quality Act.

The following quasi-judicial disclosures were made at the beginning of the meeting:

Mayor Hansen disclosed a telephone call with Daryl Browman regarding the requirement for another business to go into any vacated structures should the proposed project be approved. Council Member Hitchcock disclosed a telephone call with Brett Jolley regarding obtaining a copy of the report referred to in the prior meeting, which indicated no net tax gain from the proposed project.

Mayor Pro Tempore Katzakian disclosed a telephone call with Daryl Browman regarding generally answering any additional questions or providing additional clarification regarding the proposed project.

City Attorney Schwabauer reported on a letter received earlier during the day from Rancho

San Miguel Markets regarding a possible conflict of interest by way of Sacramento Kings tickets given by Chris Podesto, Food 4 Less representative and second cousin of Chris Katzakian, wife of Mayor Pro Tempore Katzakian, and utilized by Lauren Katzakian, the daughter of Mayor Pro Tempore Katzakian. Mr. Schwabauer opined that, based on the fact pattern described in the letter and the limited time in which he has researched the matter, Mayor Pro Tempore Katzakian does not have a conflict for Fair Political Practices Commission purposes because he did not exercise any control or decision making over the ticket, did not incur any benefit from the ticket because it was directly used by his adult daughter and her friend, and there is no other indication to show he received any kind of benefit from the ticket.

Donald Mooney, attorney for Citizens for Open Government, in light of the late receipt of the letter, requested the meeting be postponed to allow for additional research time, or in the alternative that recusal occur.

Andrea Leisy, attorney for Browman Development, concurred with City Attorney Schwabauer that a conflict of interest does not exist and requested the meeting continue.

Brett Jolley, attorney for Lodi First, echoed the statements by Donald Mooney, stating he would like additional time to research the matter further in light of the late receipt of the letter.

Alexis Pelosi, attorney for Wal-Mart, concurred with the City Attorney and requested that the meeting go forward.

Mayor Hansen stated he would like to proceed. Council Member Hitchcock requested more time to research the matter. Council Member Johnson stated he would like to proceed because the overall matter is still going back to the courts and is not finished tonight. City Attorney Schwabauer stated he would like more time to research the matter but is confident based on what he has currently researched and provided.

Council Member Hitchcock made a motion, second by Council Member Mounce, to continue the meeting to a future date in order to allow for additional time for the City Attorney to review the possible conflict of interest matter.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Member Hitchcock and Council Member Mounce

Noes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Absent: None

Interim Community Development Director Rad Bartlam presented a PowerPoint presentation regarding the Lodi Shopping Center. Specific topics of discussion included use permit, vesting tentative map, site plan and architectural review, background of proposed project, zoning and vicinity map, aerial view, use permit overview, site plan map, tentative map overview, vesting tentative parcel map, overview of site plan and architectural review, proposed landscape plan, elevations, and conclusions.

In response to Council Member Hitchcock, Mr. Bartlam stated page 16 of the proposed resolution, specifically conditions E and J, address Mr. Jolley's concerns in that they ensure that the project will meet all City ordinances and code requirements.

In response to Council Member Hitchcock, Mr. Bartlam stated Council is acting in the capacity of the Site Plan and Architectural Review Committee (SPARC), both process and design based changes will occur throughout the process, and all changes will be incorporated in a manner that meets code and ordinance requirements.

Daryl Browman of Browman Development Co. spoke in favor of the proposed project. Specific topics of discussion included the process over the previous nine years, the need for a decision to move forward or not, the large amount of public input and study of the project, solidifying the Lower Sacramento Road and Kettleman Lane intersection as a dominant retail section for the City and surrounding area, enhancing retail revenue streams for the future, the creation of new jobs, new construction spending in the area, proposed design features to enhance the community with a vintners theme, irrelevance of possible conflict of interest allegation, and confidence in efforts to lease any vacated space immediately.

In response to Mayor Hansen, Mr. Bartlam stated with respect to vacated space condition R of the proposed resolution, set forth on page 13, specifically addresses the concern. Mr. Bartlam read the condition verbatim for the public.

In response to Mayor Hansen, Mr. Browman stated the delay of the proposed project has been difficult in that the company has lost potential tenants for the space, which would be leased if the proposed project were to move forward. Mr. Browman stated he is very confident that the space itself can be leased quickly, several leases were signed in the last 12 months on other existing projects, he is committed to the community which is evident via his purchase of the existing building, Browman Development owns everything on that corner with the exception of the Taco Bell, and historically the company has a very good record of filling vacancies.

In response to Council Member Mounce, Mr. Browman stated the Food 4 Less business does very well at the existing site and the company would like it to continue doing well. He stated if the business did decide to leave he is confident that the business could be replaced easily.

In response to Council Member Hitchcock, Mr. Browman stated existing data indicates that the Supercenter does not put out other businesses in the area, sales tax dollars come in from the existing trade area, and the differences in businesses is key to their success.

A brief discussion ensued between Council Member Mounce and Mr. Browman regarding the positives and negatives associated with locating a Supercenter along a major freeway, referring to the Woodland project as an example.

Brett Jolley, attorney for Lodi First, spoke in opposition to the proposed project. Specific topics of discussion included concerns about urban decay, the historical aspect of vacated buildings, the lack of teeth in condition R, the need for urban decay to be mitigated through the Environmental Impact Report (EIR) process, the lack of Council jurisdiction because there was no effective decision made by the Planning Commission, design guidelines compliance, and the zoning concerns including set-backs for facades, architectural details on the sides of the building, and the parking area.

In response to Mayor Hansen, Mr. Jolley stated the term "Hierarchy of Land Uses" refers to the order of the laws of zoning regulations, including the Zoning Code, General Plan, etc.

In response to Council Member Hitchcock, Mr. Jolley stated he believes making the findings for overriding considerations is inappropriate because potential job creation and tax increases are not supported by substantial evidence, but rather a broad range of information and the Council needs additional information to make an informed decision.

In response to Mayor Hansen, Mr. Schwabauer stated that, based on case law and the City Council's practice, a 3-3 vote is a denial of the proposed project and the record indicates that the Planning Commission was done when it made that decision.

In response to Council Member Hitchcock, Mr. Schwabauer stated the 3-3 vote was an effective denial of the proposed project, Mr. Bartlam indicated it was a denial to the Planning Commission, and the Planning Commission did not put forth a motion to reconsider the matter. Mr. Bartlam stated page 51 of the transcript sets forth exactly what transpired, other business followed that evening, and he did not receive any comments about wanting to deliberate further.

Donald Mooney, attorney for Citizens for Open Government, spoke in opposition to the proposed project. Specific topics of discussion included the need for a reasonable range of alternatives, farmland mitigation that is greater than one to one, urban decay and changed economic conditions, global warming concerns to be addressed in the California Environmental Quality Act (CEQA), and the no project alternative as a choice.

Alexis Pelosi, attorney for Wal-Mart, spoke in favor of the proposed project. Specific topics of discussion included the long history of the proposed project, a \$1 million increase, contributions to downtown improvements, and the findings of substantial evidence notwithstanding that expert opinion can differ.

Elliott Stein, representing CBRE, spoke in regard to the estimated sales tax, property tax, and business tax referred to in a previous memo. Mr. Stein stated the numbers are consistent with the EIR and he was unable to find references to no sales tax increase in the ADE report.

In response to Council Member Hitchcock, Mr. Stein confirmed the anticipated sales tax number from the reports was approximately \$130,000.

Mr. Jolley briefly discussed the approximate numbers from all reports indicating about \$135,000 for sales tax, the need for an independent fiscal analysis, and the desire for further discussion by the Planning Commission based on his read of the transcript.

In response to Mayor Hansen and Council Members Johnson and Hitchcock, Mr. Schwabauer stated that, of the two reports by ADE, one was commissioned by the City and the other by Browman Development. He stated Wal-Mart had another consultant, which prepared its own report.

Mayor Hansen opened the hearing for public comment.

William Eichner spoke in opposition to the proposed project based on his concerns that big stores are driving out smaller businesses, the decrease in quality of life, and traffic.

Chris Wallace spoke in favor of the proposed project based on his belief of a double standard, the loss of two significant vacancy filler businesses, and the incidental benefits to surrounding businesses.

Dennis Norton spoke in favor of the proposed project based on his beliefs of benefit to the community and area organizations and overall benefits received by employees.

Marleen Borchers spoke in favor of the proposed project based on her belief of employee benefits, community benefits, and job creation.

Mark Anaforian spoke in opposition to the proposed project based on his concerns of the negative affect on other businesses. In response to Council Member Johnson, Mr. Anaforian stated he used to work for Longs Drugs as a regional manager and received negative input from other business managers throughout the area regarding the affects of a Supercenter.

Lorinda Jonard spoke in opposition to the proposed project based on her concerns regarding the

negative impact on the small town feel, sprawl and growth, American manufacturing, and global warming.

Pat Patrick, representing the Chamber of Commerce, spoke in support of the proposed project based on his beliefs in a regionally strong retail center, free enterprise, and consumer preference. In response to Council Member Hitchcock, Mr. Patrick stated currently there is not a commercial retailer on the Board. Council Member Mounce stated with respect to consumer preference the Consumer Report indicates Wal-Mart is 54 on the list for cost savings.

Bill Crowe spoke in favor of the proposed project based on his beliefs that the City is not a small town and the understanding of citizens that Measure R referred to a Wal-Mart Supercenter in its passage.

Stan Finberg spoke in opposition to the proposed project based on his concerns regarding the negative affects on other businesses in the community.

Steven Jones spoke in opposition to the proposed project based on his concerns regarding the negative affect on smaller businesses, traffic impacts, and the lack of factual information presented by Wal-Mart.

Mayor Hansen closed the public hearing after receiving no further comment.

In response to Council Member Mounce, Mr. Bartlam stated a wastewater type analysis as suggested on page 8, item 2, is generally prepared and submitted at plan check review time. Public Works Director Wally Sandelin concurred with Mr. Bartlam.

In response to Council Member Mounce, Mr. Bartlam stated if a request occurs pertaining to Item J for outdoor storage and display it will be going to SPARC for review and approval.

In response to Council Member Mounce, Mr. Bartlam stated based on his expertise he is very comfortable that the findings represented do properly reflect what the Council certified and authorized.

In response to Council Member Mounce, Mr. Bartlam confirmed that Planning Commissioner Olsen works for the city of Riverbank as an economic development manager and she did vote yes on the project.

Council Member Mounce requested additional information regarding a comment made by a speaker at a previous hearing that suggested there were 507 call outs for police for Wal-Mart. She also requested information regarding whether a Supercenter will cause that number to rise in light of the additional square footage that will be added.

Council Member Hitchcock provided an overview of the general comments she has received via email from various citizens and members of the public in opposition to the proposed project.

Council Member Hitchcock made a motion, second by Council Member Mounce, to deny the proposed project.

VOTE:

The above motion **failed** by the following vote:

Ayes: Council Member Hitchcock and Council Member Mounce

Noes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Absent: None

Council Member Johnson provided general comments regarding his review of a Wal-Mart report for the city of Hanford and the community effect based on discussions with community members, including the mayor of Hanford.

In response to Council Member Johnson, Mr. Bartlam confirmed that Measure R did pass by approximately 57% in favor.

In response to Council Member Johnson, Mr. Bartlam stated the wage provided by Wal-Mart does not enter into staff recommendation.

Mayor Hansen provided general comments regarding a 2005 survey of mayors pertaining to the effects of Wal-Mart developing in their communities and his subsequent effort to update the survey, which indicated that when the mayors were asked most were willing to do it over again.

Council Member Johnson made a motion, second by Mayor Hansen, to adopt Resolution No. 2009-58 approving Use Permit File No. U-02-12 to allow the construction of a commercial shopping center in the C-S zone and allow the sale of alcoholic beverages at the Wal-Mart Supercenter; approving the Tentative Parcel Map 03-P-001 to create 12 parcels for the project relating to the Lodi Shopping Center; and providing the architectural approval of a new commercial building to be constructed at 2640 W. Kettleman Lane (Wal-Mart) and making findings and statements of overriding considerations pursuant to CEQA.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Noes: Council Member Hitchcock, and Council Member Mounce

Absent: None

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 10:47 p.m.

ATTEST:

Randi Johl
City Clerk